UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

)	
THE HIPSAVER COMPANY, INC.,)	Civil Action No. 05-10917 PBS
)	
Plaintiff,)	
)	
v.)	ORAL HEARING REQUESTED
)	
J.T. POSEY COMPANY,)	
)	
Defendant.)	
)	

EMERGENCY MOTION OF J.T. POSEY COMPANY, INC. FOR SANCTIONS FOR THE UNTIMELY PRODUCTION OF ALTERED EVIDENCE

J.T. Posey Company, Inc. ("Posey") hereby moves the Court on an emergency basis for an order imposing sanctions on The HipSaver Company, Inc. ("HipSaver") for producing an altered database and a new 2006 Excel spreadsheet after the deadline for pre-trial disclosures. Given HipSaver's contumacious behavior, including repeated violations of this Court's discovery orders, Posey requests dismissal of HipSaver's complaint pursuant to Fed. R. Civ. P. 37(c) and the Court's inherent sanction authority. Alternatively, Posey requests (a) that the Court preclude HipSaver from offering at trial any evidence of damages beyond or inconsistent with the data contained in the database produced prior to the deadline for pre-trial disclosures, (b) and that the Court strike the 2006 Excel spreadsheet.

This motion is made pursuant to the Court's inherent sanction power and Fed.R.Civ.P. 37(c), on the ground that HipSaver produced an altered financial database and a new 2006 Excel spreadsheet after the deadline for pre-trial disclosures, the financial database being substantially altered from the financial database produced during discovery. This conduct violates Fed. R. Civ. P. 26(a), 26(e)(1), 26(e)(2) and is to Posey's extreme prejudice.

Dated: June 6, 2007 J.T. POSEY COMPANY

By its attorneys,

/s/ Anthony J. Fitzpatrick Anthony J. Fitzpatrick (BBO # 564324) DUANE MORRIS LLP 470 Atlantic Avenue, Suite 500 Boston, MA 02210 857.488.4200

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CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I hereby certify that on June 5, 2007, Douglas Morseburg conferred with counsel for HipSaver by telephone in a good faith attempt to resolve or narrow the issues presented by the instant motion, but was unable to do so.

Dated: June 6, 2007 /s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick

CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

Dated: June 6, 2007 /s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick